



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

July 30, 2003

Mr. James M. Frazier, III  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2003-5212

Dear Mr. Frazier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185129.

The Texas Department of Criminal Justice (the "department") received a request for all information regarding a particular EEO investigation. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the requested information constitutes a completed investigation subject to release under the Public Information Act. Section 552.022(a) of the Government Code provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Because the requested information pertains to a completed investigation made of, for, or by the department, it may be withheld only to the extent it is made confidential under other law or is otherwise protected by section 552.108 of the Government Code.<sup>1</sup> You argue that portions of the submitted information are excepted under sections 552.101 and 552.117 of the Government Code, which are considered “other law” for purposes of section 552.022. Thus, we will address whether any portion of the submitted information is excepted from disclosure under these exceptions.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and includes common-law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685.

You seek to withhold the identities and statements of the complainant and witnesses in the submitted investigation under common-law privacy in conjunction with *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.— El Paso 1992, writ denied). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigative file at issue involves allegations of staff misconduct of a sexual nature, but not sexual harassment. We decline to apply *Ellen* in this instance. Therefore, we conclude that you may not withhold any portion of the submitted information pursuant to section 552.101 in conjunction with common-law privacy. *Cf.* Open Records Decision No. 393 at 2-3 (1982) (in cases of serious sexual assault identity of victim is protected).

You claim that section 552.117 may also be applicable to some of the submitted information. Section 552.117(a)(3) of the Government Code requires the department to withhold “information that relates to the home address, home telephone number, or social security number of... or... reveals whether” a current or former department employee “has family members.” We agree that the submitted documents contain information that must be withheld pursuant to section 552.117(a)(3). However, we note that section 552.023 of the Government Code gives a person a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person’s privacy interest. As section 552.117 is a law intended to protect a person’s privacy interest, and the requestor is a person whose privacy interest this exception protects, you may not withhold from the requestor the personal information relating to him under section 552.117.

---

<sup>1</sup> Because you do not raise section 552.108, we do not consider the applicability of this exception.

Therefore, the department must release to the requestor his own social security number. We have marked the information pertaining to other employees, which the department must withhold from disclosure pursuant to section 552.117.

In summary, we have marked the information that the department must withhold from disclosure pursuant to section 552.117. The remaining requested information, including the requestor's social security number, must be released to the requestor.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

---

<sup>2</sup>Because some of the information is confidential with respect to the general public, if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 185129

Enc. Submitted documents

c: Mr. Thomas Rosales  
P.O. Box 151708  
Austin, Texas 78715-1708  
(w/o enclosures)